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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,509	05/19/2004	Laurence C. Mudge	0624-4129	6774

27123 7590 07/26/2005  
MORGAN & FINNEGAN, L.L.P.  
3 WORLD FINANCIAL CENTER  
NEW YORK, NY 10281-2101

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/849,509	MUDGE, LAURENCE C.	
	Examiner	Art Unit	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 and 24-31 is/are allowed.
- 6) ☒ Claim(s) 10-23 and 32-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ \* Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/19/04</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-18,20-23,32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoechst (DE 2412324; 9/25/75) in view of Fenn et al (Phytopathology, 74 (5), pp. 606-611). Hoechst teaches a fungicidal aqueous dispersion (suspension) composition comprising 0.1-3 wt % phthalocyanine. See abstract. Hoechst does not teach the composition comprising phosphorous acid or aluminum ethyl phosphite (fosetyl-Al). However, Fenn teaches a fungicidal composition comprising phosphorous acid or fosetyl-Al. See abstract. It would have been obvious to modify the composition taught by Hoechst to include the phosphorous acid or fosetyl-Al taught by Fenn. One would have been motivated to do this since both references individually teach fungicidal compositions. The references do not disclose the instantly named phthalocyanine compounds such as pigment blue 15 or the instant amounts of phosphorous acid or fosetyl-Al. It would have been obvious to one having ordinary skill in the art to employ pigment blue 15. One would have been motivated to do this since pigment blue 15 is a species in the phthalocyanine compound genus. Species within the same genus would have been expected to possess the same or similar chemical and physical properties and therefore, exhibit similar results when employed in a method of

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application. With respect to the instant amount of fosetyl-Al or phosphorous acid, one having ordinary skill in the art would have been expected to determine the optimum amount of fosetyl-Al or phosphorous acid. One would have been motivated to do this in order to make a composition that would have been most effective in controlling fungal growth.

With respect to declarations showing unexpected results for instant combination comprising fosetyl-Al (instant compound of formula I) plus a phthalocyanine compound, Applicant provides results for the combination wherein mancozeb is part of the combination. This combination is synergistic. However, Examiner argues that all of the examples showing synergism provided by Applicant include mancozeb (a fungicide). Examiner argues that Applicant provides no examples of synergism for a combination comprising only phosphorous acid or fosetyl-Al plus a phthalocyanine lacking a fungicide (mancozeb). For this reason the 35 USC 103(a) rejection is proper.

***Claim Objection / Allowable Subject Matter***

Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant composition consisting essentially of 1 part by wt of fosetyl-Al or phosphorous acid plus 0.01 to 0.1 wt % phthalocyanine compound. Claims 1-8, 24-31 are allowable. The prior art does not teach or suggest the instant composition being applied to turfgrass.

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***Other Matters***

Claim 9 is improperly canceled. A line should not be drawn through the text of a cancelled claim. Correction is necessary. See 37 CFR 1.173(b).

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alton Pryor  
Primary Examiner  
AU 1616